IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 117 OF 2007

IN

EXHIBIT 5 APPLICATION

IN

SPECIAL CIVIL SUIT NO. 53 OF 2005

WITH

CIVIL APPLICATION NO. 171 OF 2007

Shri Dattatraya Yeshwant Londhe
& Ors. ... Appellants
(Orig.Defts.2 to 5)

versus

Shri Pandurang Bhagwan Yadav & Ors. Respondents

Mr. G.N.Salunkhe, Advocate, i/b. Mr. Ashok Misal,
Advocate for the appellants.
Mr. G.S.Godbole,Advocate, a/w Mr.Dnyaneshwar Deshmukh,
Advocate for Respondent Nos. 1 & 2.

Mr.Gajre, AGP, for the State/Respondent No.4.

CORAM: J.H.BHATIA,J.

DATE: 12th December,2007.

P.C.

1. Heard the learned Counsel for the parties. Perused the record.

2. The appellants are the original defendants Nos. 2 to 5. Respodnents Nos. 1 and 2 are the original plaintiffs. The dispute is about the land Gat No.490 at village Karkab, Taluka Pandharpur, District Solapur. The land admeasures 4 H 98 R. The admitted facts are that one Bapu Deshmukh who was the father of respoondent No.3/defendant No.6 was Inamdar of that land. Inam was abolished, but he was made an offer to deposit an amount of Rs.1550 as Nazrana for re-grant of the land. According to the plaintiffs, Pandharinath Bapu deposited the amount of Nazrana with Tehsil's office on 17.10.1996. On 31.10.1996, the said Pandharinath executed a sale deed of the suit land in favour of the plaintiffs. The plaintiffs thereafter filed Regular

Civil Suiit No.53 of 2005 in the Court of Civil Judge, Senior Divison, Pandharpur, claiming that though defendants Nos. 2 to 5 have no right, title or interest in the property, they were trying to interfere with the possesion. He also filed an application for temporary injunction. Defendants Nos. 2 to 5 contested the application. According to them, Ananta Bapu Londhe, father of defendant no.3 - Vithal was cultivating the land since long as a tenant. After abolition of Inam, Bapu Deshmukh failed to deposit amount of 1550/- as Nazrana for re-grant of the land and hence land was not regranted to him. Thereafter, the offer was made to Ananta Londhe to deposit the amount of Nazrana, but he also did not deposit the amount. Therefore, the land vested in the Governnment. However, posession of Ananta Londhe and his family over the suit land continued. In the year 2003, the Government called applications and the suit land came to be allotted in favour of defendants Nos. 2 to 5. The area of the land which was allotted to defednants Nos. 2, 4 and 5 out of the said Survey number was taken away from defendants Nos. 3 and defendants Nos.2, 4 and 5 were put in possession. Thus, defendants Nos. 2 to 5 are in possession of their respective shares in the land. The plaintiffs were never in possession nor their vendors had any title to

dispose of the property.

3. The learned trial Court considered the record produced by the parties and granted temporary inunction in favour of the plaintiffs. The learned trial Court mainly noted that in the year 2005, defendants Nos. 2 to 5 had made an application in Tehsil Office making a grievance that even though the land was allotted to them, the actual possession was not given to them. On the basis of this admission in that application, the learned trial court found that defednants Nos. 2 to 5 are not in possession.

4. With the help of the learned counsel for both parties, I have carefully perused the record. The order dated 9.5.2003 passed by the A.L.T.Pandharpur reveals that for the allotment of suit land on permanent disposal basis, public notice was issued and applications were called. In all 10 persons made applications. After scrutiny of their record and the status, four persons, who are defendants Nos.2 toe 5, were found eligible for allotment of the land. Accordingly, defendants Nos. 2, 3 and 5 were allotted 1H and 24R each while defendant no.4 was allotetd 1H and

26R of the land. The land was allotted on permanent basis for personal cultivation and on inalientive and impartible tenure subject to the payment of purchase price in one instalment. The price was fixed at Rs.650/- for each of the owners - defendants Nos. 2 to 5. The record reveals that the amount has been paid by defendants Nos. 2 to 5 and an entry has been taken in the 7 x 12 extract. The 7 x 12 extract of the suit land reveals that since 1951-52, Ananta Bapu Londhe, father of defenant No.3 ,was cultivating the suit land as a tenant. This cultivation of Ananta Bapu Londhe is recorded from 1951 to 2001-02 as a tenant without a break and from the year 2002-2003, the owners of the land are shown to be cultivating the land themselves by writing a word "Khud" in the column of cultivation.

5. The record reveals that even though the offer was made to Bapu Deshmukh to deposit the Nazrana amount, he had failed to deposit that amount. Thereafter that offer was made to Ananta Bapu Londhe. He also did not make payment and, therefore, the land vested in the Government and name of Government was recorded as owner. On 17.10.1996, when defendant No.6 deposited the Nazrana amount neither that offer was made to him nor he had any title over the property. As soon as he deposited the

amount on 31.10.96, he executed a sale deed of the land in favour of the plaintiffs. Incidentally, even after that there is nothing to show that the plaintiffs were put in possession of the land. It appears that on 10.1.1997, on the basis of the said sale deed, Mutation Entry No.3666 was taken in favour of the plaintiff, but that entry has been set aside bythe Sub-Divisonal Officer and thus that Entry is also not in existence. On the other hand, there is a clear record that in the year 2003, the land was allotted to defendant Nos. 2 to 4 and they have also deposited the price of the land. Continuous possession of Ananta Bapu Londhe and then of defendants Nos. 2 to 5 was ignored by the learned trial Court while passing the impugned order of temporary injunction. It was the contention of the plaintiffs that defendants Nos. 2 to 5 had made an application to Tehsil Office contending that inspite of allotment, the land was not put in their possession. Defendants Nos. 2 to 5 denied to have filed such an application. The learned Counsel for the defedants Nos. 2 to 5/appellants contended that the said document is a forged document and it was prepared only to create evidence in favour of the plaintiffs. It is not necessary at this stage to consider the genuineness of that document but taking into consideration whole of the

record in its totality, that application has to be ignored at this stage. From the record, it appears that defendants Nos. 2 to 5 were in possession when the impugned order was passed. There is no material to prima facie establish possession of the plaintifs. Thereore, temporary injunction could not be granted in their favour.

6. In the result, the Appeal is allowed. The impugned order is hereby set aside. The Appeal stands disposed of.

7. As the Appeal itself is disposed of on merits, the Civil Application does not survive and stands disposed of.

(J.H.BHATIA,J.)